THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.16105 of 2005

ORAL ORDER:

This writ petition is filed seeking a Mandamus declaring the order passed by the Labour Court in I.D.No.53 of 2004 dated 20.6.2005 in accepting additional documentary evidence, after holding domestic enquiry as valid, is bad in law and contrary to the provisions of Section 11 and 11-A of the Industrial Disputes Act, 1947.

It appears, first respondent filed a claim petition under Section 2-A(2) of the I.D. Act before the Labour Court-I, Hyderabad challenging his termination. It is the case of the workman that before terminating his services, management had not obtained permission of the Labour Court as required under Section 33(2)(b) of the I.D. Act since there was an industrial dispute in I.D.No.185 of 2000 was pending. While so, the workman also filed a memo under Section 11-A of the I.D. Act stating that he is not questioning the validity of domestic enquiry and the Court may proceed on merits. But insofar as second aspect is concerned, i.e. whether the I.D.No.185 of 2000 was pending before the Labour Court and whether the removal of the workman from service was without obtaining any permission as required under Section 33(2)(b) of the I.D. Act is concerned, the respondent/workman sought permission of the Court to lead evidence. Though the management filed counter opposing the said petition, after hearing both the parties, Labour Court allowed the petition and permitted the workman to lead evidence. Aggrieved by the same, the present writ petition is filed.

I am of the opinion that simply because an application under Section 11-A of the I.D. Act was filed by the workman stating that he is not questioning the validity of domestic enquiry, that itself will not disentitle him from leading evidence. Insofar as second aspect is concerned, i.e. whether

the management had obtained permission under Section 33(2)(b) of the I.D. Act before dismissing the workman from service, the Labour Court rightly came to the conclusion that the workman is not at all questioning the procedural aspects of the domestic enquiry and his whole case is that he was victimized since he was one of the office bearers of the Union and raised I.D.No.185 of 2000 and during the pendency of the said I.D., without obtaining permission, he was removed from service. Therefore, the petition was allowed. In this regard, the learned counsel relied upon the judgment reported in **INDIAN ALUMINIUM CO. LTD. v. LABOUR COURT, RANCHI AND ANOTHER**[1] and drawn attention of the Court to para 8 thereof, which reads as under:

> "The proviso to Section 11-A of the Act will come into play only when the wider powers of an appellate authority conferred on a Tribunal by Section 11-A are sought to be exercised by the Tribunal for ascertaining the correctness or otherwise of the findings in the domestic enquiry. If according to law laid down by the Supreme Court prior to the year 1971, a workman became entitled to assail the action of the employer before the Tribunal on the ground that the action against him is vitiated on account of violation of the principles of natural justice or on the ground of victimization or unfair labour practice or malafides and if this matter is not covered by the main section and therefore a workman cannot be debarred from adducing evidence in that behalf on the ground that the proviso of Section 11-A of the Act shut out that evidence. The proviso to Section 11-A of the Act did not take away the right of workman to adduce evidence with regard to bias or victimization".

In view of the above, it cannot be said that the Labour Court was erroneous in allowing the application filed seeking to lead evidence on the second aspect. Merely because the workman filed an application under Section 11-A of the Act waiving challenge to the validity of the domestic enquiry, that itself will not take away his right to lead evidence on another

independent question which was not connected with the domestic enquiry to be decided by the Labour Court.

The writ petition is devoid of any merit and is liable to be dismissed; accordingly dismissed. Accordingly, the Labour Court is directed to proceed with the matter and complete the enquiry in the main I.D. within a period of six months from the date of receipt of a copy of this order. No order as to costs.

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C.V.RAMULU, J

Date: 10.7.2007

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THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.16105 of 2005

10.7.2007

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.16105 of 2005

Date: 10th July, 2007

Between:

Management of L.V.Prasad Eye Institute,
Road No.2, Banjara Hills,
Hyderabad, rep. by its Deputy Director.

.. Petitioner

And

M.Lakshminarayana and another.

.. Respondents

[1] 1991(1) LLJ 328